

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	BANKRUPTCY
WALNUT LEASING COMPANY, INC.	:	
AND EQUIPMENT LEASING	:	No. 97-19699
CORPORATION OF AMERICA, INC.	:	Chapter 11

OFFICIAL COMMITTEE OF	:	CIVIL ACTION
UNSECURED CREDITORS	:	
	:	
v.	:	
	:	
WILLIAM SHAPIRO, ET AL.	:	No. 99-526

MEMORANDUM

Ludwig, J.

March 14, 2000

Plaintiff Official Committee of Unsecured Creditors move to dismiss defendants' counterclaims for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).¹ Upon consideration of the motion, the counterclaims will be dismissed.²

Background

¹ Under Fed. R. Civ. P. 12(b)(6), the allegations of the complaint (counterclaims) are accepted as true, all reasonable inferences are drawn in the light most favorable to the (counterclaim) plaintiff, and dismissal is appropriate only if it appears that (counterclaim) plaintiff could prove no set of facts that would entitle them to relief. See Port Authority of New York and New Jersey v. Arcadian Corp., Civ. A. No. 98-5045, 1999 WL 624590, at *4 (3d Cir. Aug. 18, 1999).

² The counterclaimants are the Shapiro and director defendants, specifically William Shapiro, Kenneth Shapiro, Nathan Tattar, Welco Securities, Inc., the Law Offices of William Shapiro Esq., P.C., Financial Data, Inc., Walnut Associates, Inc., and Kenner Collection Agency (the Shapiro group), along with John Orr, Adam Varrenti, Jr., Philip Bagley, Deljean Shapiro, and Lester Shapiro (the director group).

Counterclaimants are individuals and corporations that were involved in the ownership and operation of Walnut Equipment Corporation and Equipment Leasing Corporation of America.³ William Shapiro, an attorney, is the sole shareholder of Walnut, and ELCOA is its wholly-owned subsidiary. In 1997, Walnut and ELCOA filed for bankruptcy under Chapter 11. In re Walnut Leasing Co., Inc. and Equipment Leasing Corp. of America, Inc., Bankr. No. 97-19699 (Bankr. E.D. Pa.). Thereafter, Walnut's and ELCOA's debt certificate holders initiated a class action for securities fraud. See Neuberger v. Shapiro, Civ. A. No. 97-7947.

On February 1, 1999, the Official Committee of Unsecured Creditors, having been authorized by order of the Bankruptcy Court,⁴ filed the present action against the Shapiro group, the director group, and Walnut's and ELCOA's auditors and underwriters for tortiously precipitating the debtor corporations' bankruptcies. On 12(b)(6) motions, the Committee's claims against the auditors and underwriters were dismissed.⁵ Order, Sept. 8, 1999 (dismissing R.F. Lafferty

³ For a more detailed background, see order and memorandum, Sept. 8, 1999 (motion to dismiss granted in part and denied in part). This action is case-managed with Neuberger v. Shapiro, Civ. A. No. 97-7947 (securities fraud) and Baker v. Summit, Civ. A. No. 99-2010 (indentured trustee).

⁴ In re Walnut Leasing Co., Inc. and Equipment Leasing Corp. of America, Inc., Bankr. No. 97-19699 (Bankr. E.D. Pa.)(order, Jan. 19, 1999)(approving a stipulation between the Committee and the debtors in which the Committee was authorized to file suit on the debtors' behalf).

⁵ These claims were severed, order, Jan. 11, 2000, and the
(continued...)

& Co. and Cogen, Sklar, L.L.P.). All the other claims were permitted to proceed. The answers to the complaint filed by the Shapiro group and the director group defendants contain the counterclaims against the Committee that are the subject of the present motion.⁶

Analysis⁷

The counterclaims are that 1) the Committee “perpetuated” the Chapter 11 proceedings for the financial benefit of the professionals who represent the Committee; 2) individual creditors on the Committee violated their fiduciary obligation to the other creditors; 3) the Committee acted in bad faith in rejecting an offer from a third party to purchase debtors’ lease portfolio and in selecting another party to service the leases; and 4) the Committee’s filing of this action was outside the scope — ultra vires — of its statutory authority because it was not based on defendants’ wrongful conduct but instead sought to “harass, annoy, vex,

⁵(...continued)
dismissals are on appeal, notice of appeal filed Jan. 28, 2000.

⁶ The substance of the separate counterclaims is nearly identical.

⁷ While facts set forth in a pleading, such as defendants’ counterclaims, must be accepted as true in deciding a 12(b)(6) motion, unsupported conclusory statements and assertions need not be. See Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997)(“[a] court need not credit a complaint’s ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.”)(citing In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997)). Defendants’ counterclaims contain almost no factual allegations, direct or inferential, that would sustain recovery under an actionable legal theory.

and embarrass” defendants. Shapiro defs.’ counterclaim at ¶ 119-29, director defs.’ counterclaim at ¶ 126-37. Damages claimed are for “embarrassment, damage to reputation, humiliation, expenses in defending the action, and emotional distress.” Id. at ¶ 130, ¶ 137.

Counterclaim 1 — Professionals’ Financial Benefit

The counterclaims allege that the Committee “perpetuate[d] the Debtors’ Chapter 11 proceedings in an attempt to provide benefits through lucrative fees paid to [the] professionals from the Debtors’ funds.” Shapiro defs.’ counterclaim at ¶ 121, director defs.’ counterclaim at ¶ 128. However, the Bankruptcy Court approved the fees in question, the approvals became final, and they cannot now be collaterally reviewed or made the basis of a claim of impropriety.

Counterclaim 2 — Individual Committee Members’ Fiduciary Duties

According to the counterclaims, “individual creditors appointed to the Committee breached their fiduciary obligation to act in the interests of the creditors . . . by reason of using their position to advance their own individual interests.” Shapiro defs.’ counterclaim at ¶ 122, director defs.’ counterclaim at ¶ 129. It is correct that a “member of a committee owes a fiduciary duty to the class the committee represents.” Collier on Bankruptcy ¶ 1103.05[2] (15th ed. rev. 1998) (citing In re ABC Automotive Prods. Corp., 210 B.R. 437 (Bankr. E.D. Pa.

1997)). Here, defendants were sued by the Committee as parties responsible for the alleged spoliation of the debtor corporations, not as their creditors or debtors. Individual committee members owe no fiduciary duty to third parties. See Official Unsecured Creditors' Committee v. Stern (In re SPM Manufacturing), 984 F.2d 1305, 1315 (2d Cir. 1993)(“While a creditors' committee and its members must act in accordance with the provisions of the Bankruptcy Code and with proper regard for the bankruptcy court, the committee is a fiduciary for those whom it represents, not for the debtor or the estate generally.”); Pan Am Corp. v. Delta Airlines, Inc., 175 B.R. 438, 514 (Bankr. S.D.N.Y. 1994)(same). Moreover, committee members enjoy qualified immunity “from legal action for matters relating to the performance of the committee’s duties.” Collier on Bankruptcy ¶ 1103.05[4][a] (15th ed. rev. 1998). They are liable only for actions taken outside their authority or for “willful misconduct.” Id. No cognizable basis is specified in the counterclaims for such a finding.

Counterclaim 3 — The Committee’s Lack of Good Faith and Fair Dealing

The claim asserted here was rejected in the bankruptcy proceeding. The Committee’s recommendation to have Walnut’s lease portfolio serviced by a third party — and not sold — was approved by the Bankruptcy Court. See In re Walnut Equipment Leasing Co., Inc., Bankr. No. 97-19699 (Bankr. E.D.

Pa.)(order, Nov. 25, 1998). The Committee owes a fiduciary duty only to the class of creditors that it represents and not to third parties, the debtor, or individual creditors.⁸ See Pan Am Corp. v. Delta Airlines, Inc., 175 B.R. at 514; Collier on Bankruptcy ¶ 1103.05[2] (15th ed. rev. 1998).

Counterclaim 4 — Present Action Is Ultra Vires

This argument has previously been rejected by this Court. See order, Sept. 8, 1999 at 6 n.4 (“The Committee has perfected its right to bring suit on behalf of the debtors under [11 U.S.C. §§ 1103(c)(5), 1109(b)].”). Defendants also argue that the present action is an abuse of process,⁹ because of harassment and

⁸ The Court of Appeals for the Second Circuit has discussed the role of the creditors’ committee as relates to whom it owes a fiduciary duty: The creditors’ committee is not merely a conduit through whom the debtor speaks to and negotiates with creditors generally. On the contrary, it is purposely intended to represent the necessarily different interests and concerns of the creditors it represents. It must necessarily be adversarial in a sense, though its relation with the debtor may be supportive and friendly. There is simply no other entity established by the Code to guard those interests. The committee as the sum of its members is not intended to be merely an arbiter but a partisan which will aid, assist, and monitor the debtor pursuant to its own self-interest.

Official Unsecured Creditors’ Committee v. Stern (In re SPM Manufacturing), 984 F.2d 1305, 1316 (2d Cir. 1993).

⁹ Defendants cannot make out a claim for abuse of process. Under Pennsylvania law, abuse of process entails “some definitive act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process . . . ; there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” Shaffer v. Stewart, 326 Pa. Super. 135, 139, 473 (continued...)

resulting mental anguish. Defs.' mem. at 9. Unfortunately, those consequences attend the defense of lawsuits generally. The Committee is immune from liability for actions taken within its authority.

An order accompanies this memorandum.

Edmund V. Ludwig, J.

⁹(...continued)

A.2d 1017, 1019 (Pa. Super. Ct. 1984)(citing Dumont Television and Radio Corp. v. Franklin Electric Co., 397 Pa. Super. 274, 279-80, 154 A.2d 585, 587-88 (Pa. Super. Ct. 1988)). Plaintiff's complaint survived defendants' motion to dismiss; it cannot now be challenged by a counterclaim for abuse of process. See order, Sept. 8, 1999. Also, the counterclaims are based on the Committee's filing of the lawsuit for "vexatious" purposes. "The Supreme Court of Pennsylvania, as well as lower appellate courts, have held that the abuse of process tort is inapplicable to the improper initiation of a civil proceeding." Barakat v. Delaware County Memorial Hospital, Civ. A. No. 97-2012, 1997 WL 381607, at *2 (E.D. Pa. July 2, 1997)(citing McGee v. Feege, 517 Pa. 247, 535 A.2d 1020, 1024 (Pa. 1987)). The tort of malicious use of process is codified at 42 Pa. C.S. § 8351 and requires "the proceedings have terminated in favor of the person against whom they are brought." The counterclaims fail as a matter of law for this reason as well.

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ORDER

AND NOW, this 14th day of March, 2000, the motion of plaintiff
Official Committee of Unsecured Creditors to dismiss defendants' counterclaims
is granted. Fed. R. Civ. P. 12(b)(6).

Edmund V. Ludwig, J.